

§ 1789.152

Third-party Commercial Institution means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

§ 1789.152 Policy.

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) The government shall retain sole discretion in the selection of Consultants to provide services to RUS and the form of contract utilized. RUS may either use the services of one or more Consultants retained under Retainer Contracts or the government may elect to retain a Consultant not otherwise on retainer. The government shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower may bring considerations to the attention of the government which the Borrower deems pertinent to the selection process.

(e) RUS shall retain sole discretion as to whether to further pursue use of an outside consultant for the relevant application in the event the Borrower does not enter into the agreements referenced in §1789.158(c)(3)(iii) within 60 days of the government providing to the Borrower the information set forth in §1789.158(c)(3).

§ 1789.153 Borrower funding.

Borrowers shall use their general funds for the purposes of funding con-

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sultant services hereunder. Borrowers may not use the proceeds of loans made or guaranteed under the RE Act for costs incurred by Borrowers pursuant to the funding of consultant services for RUS.

§ 1789.154 Eligible borrowers.

All Borrowers are eligible to fund consultant services under this part.

§ 1789.155 Approval criteria.

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

§ 1789.156 Proposal procedure.

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit